

EXHIBIT 7

FILED

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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1 IN RE:

2 Chapter 11
3 US BANKRUPTCY COURT
4 NORTHWESTERN CORPORATION, Case No. 03-12872 (JLP)

5 Debtor.

6
7 NORTHWESTERN CORPORATION,

8 Plaintiff,

9 v.

10 Adversary No. 04-55051 (JLP)

11 MAGTEN ASSET MANAGEMENT
12 CORPORATION and TALTON R.
13 EMBRY,

14 Defendants.

15 Jan. 7, 2005 (11:30 a.m.)
16 (Wilmington)

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18 TRANSCRIPT OF PROCEEDINGS
19 BEFORE THE HONORABLE JOHN L. PETERSON
20 UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.



(This hearing was conducted in Wilmington with the
Judge and all participants joining in telephonically.)

THE COURT: Mr. Chipman, are you there?

4 MR. CHIPMAN: Yes, Your Honor, I'm here.

5 THE COURT: Mr. Austin?

6 MR. AUSTIN: Yes, Your Honor.

7 THE COURT: Ms. Denniston?

MS. DENNISTON: Yes, Your Honor.

THE COURT: Mr. Battista

10 MR. PACKEL: Your Honor, this is Mr. Packel. I'm
11 on for Mr. Battista.

12 THE COURT: What's your last name?

13 MR. PACKEL: Packel.

14 THE COURT: All right. Mr. Kaplan.

15 MR. KAPLAN: I'm here, Your Honor.

16 THE COURT: Thank you. Mr. Sutty?

17 MR. SUTTY: I'm here, Your Honor.

18 THE COURT: And Mr. Alcott?

19 MR. ALCOTT: Yes, I'm here,

20 THE COURT: I really don't know where we

21 this thing because of the withdrawal of the motion by
22 Northwestern for the protective order. Evidently, from what
23 I've seen in the responsive pleadings from the defendant,
24 they're pursuing the matter in the Second Circuit in another
25 District of New York to quash the subpoena, and then I had

1 filed this morning a 97-page document by the Committee
2 seeking a protective order and an un-filed objection thereto
3 by the defendant. Let me ask, first of all, Mr. Chipman --
4 Mr. Austin, do you want to proceed with the respective order
5 in this matter before this Court or --

6 MR. AUSTIN: Your Honor, this is Jesse Austin. I
7 will let Ms. Denniston address -- She's going to be speaking
8 on behalf of Northwestern issues today, so I'll let her
9 address it.

10 MS. DENNISTON: Your Honor, this is Karol Denniston
11 for the record. The motion for protective order was
12 initially filed in your Court because Paul Hastings
13 erroneously believed it had been issued out of the Delaware
14 Bankruptcy Court. When we discovered that it had been issued
15 out of the Southern District of New York, we withdrew the
16 papers and refiled the motion for protective order in the
17 Southern District of New York. Conceptually, Your Honor, I
18 have no problem proceeding on this motion though I do have
19 concerns given the case law that we cited in the papers we
20 filed yesterday that the Court from which a subpoena is
21 issued is the court that must quash it. So that was the
22 reason that Paul Hastings withdrew and refiled because that
23 was the issuing court.

24 THE COURT: I agree that there's been a subpoena
25 issued out of the Southern District of New York, but as I go

1 through the subpoena and the attachment to the subpoena, I
2 kind of took it as a request for a deposition with a subpoena
3 duces tecum, and that's why I thought that it was a
4 jurisdictional matter for this Court.

5 MS. DENNISTON: With that, Your Honor, we don't
6 have any problem with proceeding with the motion. We can
7 certainly refile it with the Bankruptcy Court and would ask
8 that that be noted on the record as the result coming out of
9 this hearing.

10 THE COURT: All right. I go through the subpoena,
11 and I've got -- and the objection thereto -- let me suggest
12 what I think and then you, counsel, you can respond. First
13 of all, I think the subpoena is too broad. It gives the
14 defendant the opportunity to examine into matters that have
15 nothing to do with Magten or Mr. Embry appearance and duty on
16 that Committee between November the 26th of 2003 and May the
17 6th of 2004. It seems to me that the subpoena -- the
18 protective order should be granted in that part, that it
19 should be all of the documentation -- all of the conversation
20 to the communications that were made to Mr. Embry by a
21 representative of Northwestern should be restricted to that
22 period. The second thing is that they want a confidentiality
23 agreement. I don't know why they want -- that kind of throws
24 me because if Paul Hastings was the interface committee, and
25 they were the ones that were giving this confidential non-

1 public disclosure information to the Committee members, there
2 is no privilege as far as I'm concerned. There is a
3 privilege to Paul Hastings for any conversations,
4 communications that they had with Northwestern that led to
5 that disclosure of that information to the Committee, and as
6 to those matters, I think the privilege is proper. But
7 anything that they've done, and I assume it was Paul Hastings
8 that interfaced with the Committee. I don't know that for a
9 fact, but if it was, then Paul Hastings is going to have to
10 divulge what they gave to this Committee or to --
11 particularly, to the defendant, and that's not a privileged
12 communication. So, I don't understand why there has to be a
13 confidentiality agreement relative to that matter unless some
14 of these non-public disclosure statements have never been
15 made public.

16 MS. DENNISTON: Your Honor, this is Karol
17 Denniston. Would it be appropriate for me to respond to
18 those first two points?

19 THE COURT: Oh, yeah.

20 MS. DENNISTON: As to the first point, Your Honor,
21 the need for a protective order, I'm going to take that first
22 or the need for a confidentiality agreement. The debtor
23 throughout the case did provide confidential information to
24 the Committee and its advisors that has not been made public.
25 This consists of a number of drafts of financial projections

1 and refinings. There was a fair amount of negotiation and
2 there's a significant amount of draft information that has
3 been produced throughout the life of this case that the
4 Committee had access to that needs to remain confidential.

5 THE COURT: Are we going to close the trial then?

6 MS. DENNISTON: No, that would not be our intent,
7 Your Honor. I think that we just need to manage the process
8 of producing the information and manage what is introduced as
9 evidence, but at this point, as we understand Magten's
10 request for production, they want all confidential
11 information that the debtor produced to the Committee and
12 that would include this pool of information, and I think the
13 parties can work out appropriate stipulations as to how this
14 information is supposed to be used at trial in terms of
15 protecting the confidential nature. That is the first set of
16 confidential information. There is a second set that the
17 debtor is much more focused on preserving confidentiality and
18 that includes the communications that the debtor received of
19 indications of interest from third parties interested in
20 acquiring or buying business pieces of the debtor's business
21 where the business is an operating concern. That information
22 is subject to third-party protective or third-party
23 confidentiality agreements as between Northwestern and those
24 parties. That information has to be managed on a
25 confidential basis because of the debtor's ongoing obligation

1 and confidentiality to those third parties that may be
2 indications of interest or the offers. So there's two layers
3 here. I think that the first layer can be fairly easily
4 managed because those documents have been pursued with a
5 confidentiality agreement that makes it clear that those
6 documents can be used for the purpose of this case and
7 nothing more and not disclosed to parties outside the case.
8 I think the second one is one that we're going to need to
9 take care of how and when or if those actual documents
10 themselves were introduced into evidence. Since with that,
11 as to the confidentiality issue altogether, there was a
12 confidentiality or the remains of a confidentiality agreement
13 as between Northwestern and the Committee, it has been the
14 debtor's practice and procedure throughout this case to
15 request a confidentiality agreement from parties reviewing
16 documents, particularly those that were drafts in nature and
17 that did not unnecessarily or unduly hamper anybody at trial
18 on the confirmation of the case. So that's the issue with
19 the confidentiality agreement. That being said, I would
20 advise the Court that through negotiation with Fried, Frank
21 that we do have a stipulation that is very close to being
22 acceptable to the debtor, and I think that the agreement as
23 it now stands is that the debtor will be producing its
24 documents on Monday, pursuant to the local Delaware rule to
25 Fried, Frank, Magten's counsel, while we continue to finalize

1 the stipulation that can be presented to this Court. So, I
2 don't think that the confidentiality issue in and of itself
3 remains as glaring as it was when the papers were initially
4 filed, and with that, I mean, I think that kind of addresses
5 confidentiality. As to Paul Hastings and the subpoenas
6 served on Paul Hastings for a deposition and documents, there
7 are two big picture issues, Your Honor. One is that we would
8 concur with the Court's analysis that there are confidential
9 communications that would be subject to the attorney/client
10 privilege.

11 THE COURT: All you have to do is assert them at
12 the depositions.

13 MS. DENNISTON: I understand that, Your Honor, but
14 here's the issue: We don't believe and I think there is a
15 misunderstanding as to how the confidential communication
16 information was relayed to the Creditors Committee. It did
17 not come through Paul Hastings. It came through
18 representatives of the debtor's senior management, and we are
19 producing on Monday the same information that Paul Hastings
20 would have access to. It's that same pool of information
21 that senior management at Northwestern made available to the
22 Committee, individual Committee members, and its financial
23 advisors. That information was not provided by Paul
24 Hastings. It was provided through Northwestern's management,
25 and the e-mails and documents being produced will show that.

1 There are no separate documents that would indicate the Paul
2 Hastings had any communications pursuant to which it provided
3 confidential communications to the Committee or its advisors
4 that don't involve a Northwestern management person. So it's
5 Paul Hastings' position that the subpoena itself is unduly
6 burdensome because it requires production of the very same
7 information that's being produced on Monday. We have said as
8 much in the objections and in the papers we filed with the
9 Court yesterday. There are no other documents, and there are
10 no other communications because whenever business
11 information, which is the bulk of the confidential
12 information, it's primarily financial and operating
13 information, it always involves distributions with the
14 Northwestern management team responsible for this case.

15 THE COURT: Mr. Kaplan.

16 MS. STEINGARD: This is Ms. Steingard, Your Honor,
17 from Fried, Frank with Mr. Kaplan. I would like to respond
18 to Ms. Denniston. The thrust of the debtor's claims here are
19 that somehow both through Northwestern and its advisors,
20 there was information that was confidential dumped into the
21 Committee and the Committee's advisors and somehow that
22 information reached Mr. Embry. If we look at responses to
23 interrogatories that have been provided by Northwestern to us
24 yesterday, a number of categories of information were clearly
25 provided by Paul Hastings to the Committee such as

1 information concerning the status and negotiation of
2 mediations regarding McGreevey. This is something listed in
3 response to questions posed by defense. These are
4 Northwestern interrogatory responses that purport to list the
5 information they claim was confidential that the defendants
6 had when the trades occurred. So there was those
7 negotiations, information relating to the stipulation among
8 the debtor Atlantic Richfield and the United States on behalf
9 of the Environmental Protection Agency, information related
10 to the Securities & Exchange Commission investigation, status
11 of negotiations and mediation regarding Northwestern
12 Securities litigation case number class actions and
13 derivative litigation. This is the kind of information that
14 the Committee received from Paul Hastings and not from
15 management of Northwestern. In addition, there are
16 substantial -- there's substantial lists of damages that
17 involve fees and costs of Paul Hastings that again are
18 included in responses by Northwest to the interrogatories
19 posed by defendants. So, Northwest itself has put Paul
20 Hastings in the midst of this by saying that these kinds of
21 information provided by Paul Hastings to the Committee and
22 these fees are an integral part of this matter. And that's
23 why we ask for this information, and, alternatively, Your
24 Honor, we spoke with Paul Hastings and offered them the
25 opportunity to give us an affidavit that says that Paul

1 Hastings has concluded that it did not provide confidential
2 information to the Committee and, you know, was not involved
3 in the transfer or, you know, the delivery of confidential
4 information to Mr. Embry. All we did was ask for that, and
5 the answer was no. So we did give Paul Hastings an
6 alternative, Your Honor. So, we can get the affidavit if
7 that is something Paul Hastings is still interested in doing,
8 certainly, it's still on the table from our point of view, or
9 we can go forward with the discovery as it has been permitted
10 by Your Honor, that would be fine with us.

11 THE COURT: Well, the deposition is set for January
12 11th?

13 MS. STEINGARD: Yes, Your Honor, it is, and, but --

14 THE COURT: Could you go ahead with that?

15 MS. STEINGARD: Well, it's hard to do that, Your
16 Honor, because we haven't received documents.

17 THE COURT: Well, when do you want to reset it?

18 MS. STEINGARD: Well -- And part of the difficulty
19 with that, Your Honor, is because as you see there are -- and
20 as all the parties have complained -- and if I could complain
21 about this, I would also. There are really a lot of
22 depositions going to happen, not because we want them but
23 because the depositions reflect the potential witness list
24 that is now included also in the response to the
25 interrogatory. So, if we were going to delay a week or so,

1 so that Paul Hastings could produce the documents and we
2 could look at them, we would be beyond, unfortunately now,
3 the January 21st cutoff. So, you know, we would -- And we
4 have depositions starting on Monday or Tuesday, some one a
5 day and some two a day, until the cutoff, is the problem.
6 So, we could try to fit it in. We could work on a Saturday
7 or a Sunday to do it, after we give them a week, if that's a
8 reasonable time, to produce the documents, or we could try to
9 push things out a week or so at the end of the schedule.

10 MS. DENNISTON: Your Honor, this is Karol
11 Denniston. If I could make a proffer to the Court at this
12 time I think it would be appropriate and useful.

13 THE COURT: Go ahead.

14 MS. DENNISTON: Being the attorney primarily
15 responsible for gathering documents responsive to all the
16 requests, I've been the person that has reviewed the
17 responses in connection with the determination that there's
18 nothing in any of the Paul Hastings' files responsive to the
19 requests that aren't being produced on Monday. So, I want to
20 be clear here that there are no other documents that can be
21 produced other than what's being produced on Monday. Paul
22 Hastings does not have in its file any documents that are not
23 being produced in connection with the Northwestern's
24 production. That would be point number one. Point number
25 two, with the limited exception of a meeting with the counsel

1 for the debtor and the counsel for the Committee about the
2 SEC investigation. All of the other items that Ms. Steingard
3 described that are in Northwestern's interrogatory responses
4 involved a representative from Northwestern on the telephone
5 or in connection with when the information was conveyed to
6 the Committee, and those people have been identified with the
7 exception of Northwestern's general counsel, Tom Knapp, who
8 is the person that was involved in communicating or updating
9 various, you know, Committee members when asked about pieces
10 of litigation. So, on one level, Your Honor, this is a
11 little bit of a tempest in a teapot, and I think that we
12 attempted in our motion for protective order to identify
13 those cases so that it's inappropriate to subpoena counsel
14 and ask for production of documents from counsel without
15 first looking at the plan's response.

16 MS. STEINGARD: All right.

17 MS. DENNISTON: Over and above that by going
18 through to make sure that there is no separate set of
19 documents that can be produced.

20 THE COURT: All right. Let me interject something
21 here. When I first got into this case and I wrapped up this
22 docket and looked at it, and I determined that something had
23 to be happening between the parties because I didn't see
24 where there was any plans by the counsel for the parties with
25 Rule 26(f), and that just triggered the scheduling order that

1 I put out. There hasn't been any response, any filed at
2 least on the docket by the attorneys of record on their
3 attempt in good faith to propose a discovery plan, and that
4 hasn't been filed within fourteen days after you're supposed
5 to have your mandatory comments and there was no meeting, as
6 I understand it now. And so, you're all swimming around back
7 there at this late time wondering what to hell to do with the
8 discovery. So, I'm not too sympathetic about any extensions
9 of time, and I'll tell you I'm not going to extend the time
10 for the trial in this case. It's going to go on the 7th, and
11 I don't know how long it's going to take, but I'll tell you
12 what I've done, I've got two days set forth for the 7th and
13 the 8th. I've got other matters, omnibus hearings on the
14 9th, and I've got two days, the 10th and the 11th where we
15 could -- if we aren't concluded in the first two days. But
16 you're going to have to arrange -- It sounds to me as though
17 the documentation is going to be presented in a timely
18 manner, and you can take the deposition of a representative
19 of Paul Hastings, and I've still got this matter with the
20 Committee, but that could go forward. If you need a few more
21 days to reschedule that, we'll do that now.

22 MS. STEINGARD: Yeah. Well, I think that we do
23 since it is on for Tuesday, Your Honor. We're not receiving
24 the documents till Tuesday, and Northwest has indicated that
25 they're going to deliver thirty boxes of documents. We

1 initially had wanted the documents the end of December, and
2 because of the protective order initially requested by
3 Northwest, we received no documents the 30th of December.
4 We're not receiving documents until Tuesday, and so given the
5 fact that at that point receiving thirty boxes I don't think
6 that we can depose Paul Hastings the same day and have that
7 be productive.

8 THE COURT: I'm not --

9 MS. STEINGARD: Yeah.

10 THE COURT: Take another week.

11 MS. STEINGARD: Okay, so we will -- We will
12 schedule Paul Hastings. Karol will talk, you and I will
13 talk, and we'll put it on, you know, we'll do three
14 depositions or something one day the next week.

15 MS. DENNISTON: I think what I'd like to do though
16 is to just make a record Bonnie to be sure that the facts are
17 accurate. First of all, we're producing on Monday --

18 MS. STEINGARD: No, you were producing --

19 MS. DENNISTON: -- documents are due under the
20 rules not the earlier date requested by Magten. Secondly, I
21 think it would be productive for us to agree to have a meet
22 and confer after that production has occurred because we are
23 providing you with an index, a number of those documents we
24 know that you will have seen, and you won't need to take
25 copies of because they're pleadings on file with the

1 Bankruptcy Court. That being said, I think after you have
2 had a chance to look at the index, the scope of the
3 production, it may be productive at that point for us to talk
4 about whether or not we can reach an acceptable stipulation.

5 MS. STEINGARD: Right. Okay, Karol, I understand
6 what you said, and I understand that you want to get the
7 facts straight and let me see if I can do that as well,
8 although I really don't think we should be burdening the
9 Court with this. The arrangement that has been made is that
10 there will be thirty boxes delivered to Fried, Frank on
11 Tuesday.

12 MS. DENNISTON: That's not accurate, Bonnie, there
13 will be --

14 MS. STEINGARD: That arrangement --

15 THE COURT: It should be on the 10th, that's a
16 Monday.

17 MS. STEINGARD: Right.

18 MS. DENNISTON: And we are making the documents
19 available for review on Monday, and we have agreed to copy
20 whatever you would like copies of.

21 MS. STEINGARD: Karol, Gary has a different
22 arrangement, and we can talk about this on line -- off line,
23 but we're not getting documents as far as I understand until
24 Tuesday. In any case, there are thirty boxes of it, and we
25 have to go through it and deposing you on Tuesday would not

1 be possible. We're happy to meet and confer later in the
2 week.

3 THE COURT: Well, I hope it's all material because

4 --

5 MS. STEINGARD: Well, Your Honor --

6 THE COURT: What it comes down to as I read this
7 complaint and the denials that were made in the --

8 MS. STEINGARD: Right, and you know --

9 THE COURT: About what Mr. Embry had found out --

10 MS. STEINGARD: Right.

11 THE COURT: -- too, and what he used --

12 MS. STEINGARD: Right.

13 THE COURT: -- and if he gets on the stand and he
14 says, I never saw that.

15 MS. STEINGARD: Right, and the problem is, Your
16 Honor, that the allegations here are about data dumps made by
17 the debtor to Committee counsel and data dumps made by the
18 debtor to Committee financial advisors, some of, you know --
19 and not given any directly to Mr. Embry and the Committee
20 here has now said that they don't want to be deposed to sort
21 of tell us what they think they gave to Mr. Embry.

22 THE COURT: Yeah, I just got that in this morning.

23 MS. STEINGARD: Right, and in terms of potential
24 witnesses that have been listed by Northwest, every member of
25 the Committee is included.

1 THE COURT: If they're going to be deposed --

2 MS. STEINGARD: And the Committee's financial
3 advisors have been included, the Committee counsel has been
4 included, all of these as potential witnesses in these
5 interrogatories.

6 THE COURT: I'm not telling you that you're not
7 going to have the opportunity to depose these people.

8 MR. ALCOTT: Your Honor, if I may be heard. It's
9 Mark Alcott representing the Committee, and if it's
10 appropriate now to discuss our motion, I'd be happy to do it.

11 THE COURT: All right. Is that all right, counsel
12 for Magten? Will you take up that matter now too?

13 MS. STEINGARD: Yes, Your Honor.

14 THE COURT: Having an order helps, but it did come
15 in to me and I have read it over. There might be a proposal
16 here that a lot of those matters can be taken care of by
17 affidavit.

18 MR. ALCOTT: Well, that --

19 MS. STEINGARD: That has -- Judge --

20 MR. ALCOTT: I think I have the floor, counsel.

21 THE COURT: Go ahead.

22 MR. ALCOTT: That proposal's been made in the
23 abstract, but the reality is that the affidavit that was
24 tendered to us, like the subpoenas themselves, is
25 extraordinarily overbroad to the point of being over the top.

1 It goes way beyond anything that they represent in their
2 papers here or that they could possibly request. I mean,
3 they want us to aver in an affidavit that no one from each of
4 the institutions had any conversation with the defendant
5 concerning Northwestern. They want us to swear that at no
6 time anyone at each of these institutions provided the
7 defendant any information concerning Northwestern, and they
8 want us to represent that the institution was satisfied that
9 Northwestern's disclosure statement contains sufficient
10 information for a creditor to make a fully informed decision
11 whether to accept or reject Northwestern's plan of
12 reorganization. I'm reading from the affidavit they tendered
13 to us. That's got nothing to do with this case. It's got
14 nothing to do with these subpoenas. So, they're now rapidly
15 trying to blue-pencil and scale down these extraordinarily
16 broad subpoenas that they've served, but the fact is that
17 their seeking really irrelevant information, duplicative,
18 from multiple parties from each of the nine former members or
19 seven former members of the Committee plus the Committee's
20 counsel plus the Committee's financial advisor, and --

21 THE COURT: Well, those people have been listed as
22 witnesses.

23 MR. ALCOTT: Well, I don't believe they've been
24 listed by witnesses, but not by us certainly.

25 THE COURT: But you're not a party. They're listed

1 by Northwestern; is that correct?

2 MS. STEINGARD: They're listed by Northwestern as
3 witnesses, Your Honor, each of them.

4 MR. ALCOTT: They have not been listed as -- I
5 don't think the time for listing witnesses has --

6 THE COURT: No, but they've been listed as
7 potential witnesses in the answer to interrogatories; is that
8 right?

9 MR. ALCOTT: No. As I understand it, the
10 defendants are taking the position based on what's in the
11 interrogatories that they're potential witnesses. So it's a
12 bootstrap operation here.

13 MS. DENNISTON: Your Honor, this is Karol
14 Denniston. I'd like to just be heard briefly on that point
15 so the record is clear. Northwestern did identify all of
16 those individuals as potential witnesses in its interrogatory
17 responses.

18 MS. STEINGARD: Yes. And, Your Honor, we didn't
19 receive any modifications of the affidavit from Paul Weiss
20 that they would find acceptable, and with respect . . .
21 (break in taping) allegation or the statement that we would
22 like in the affidavit concerning that the Committee member
23 pursuant to his duties review the disclosure statement so
24 that the material information that Committee member was aware
25 of was disclosed is because a large number of the trades that

1 occurred here that the Committee -- excuse me, that the
2 debtor's complaining of, occurred after the disclosure
3 statement and plan was filed.

4 THE COURT: I understand that.

5 MS. STEINGARD: And so that's why we want the
6 Committee member to say, sure, as they understood it, all of
7 that was disclosed, all material information --

8 THE COURT: I don't understand why a Committee
9 member would have to give an opinion on that issue.

10 MR. AUSTIN: I have an order from the Court that
11 says the disclosure statement didn't obtain adequate
12 information.

13 MS. STEINGARD: Well, okay -- well, then Jesse,
14 thank you -- well, not adequate, but all material information
15 that the Creditors Committee was aware of as representatives
16 --

17 THE COURT: (Microphone not recording.)

18 MR. ALCOTT: (Microphone not recording.)

19 THE COURT: Hold it, hold it. Why don't we
20 simplify this by having each of the Committee members sign
21 their own affidavit as to what contact it had with the
22 defendant, Embry, and what they told him and by date as much
23 as they can.

24 MR. ALCOTT: Well, we're certainly prepared to do
25 that.

1 THE COURT: And that should more than cover -- If
2 you're not satisfied with that, and those affidavits should
3 be prepared promptly, if you're not satisfied with that, I'll
4 let you take their depositions on those affidavits sometime
5 the week of the 21st or the 28th.

6 MS. STEINGARD: Thank you very much, Your Honor,
7 that would be satisfactory.

8 MR. ALCOTT: A reasonable resolution, Your Honor.

9 THE COURT: Okay with you, Mr. Sutty, and --

10 MR. SUTTY: Yes, Your Honor. I believe my co-
11 counsel was addressing this issue, thank you.

12 THE COURT: Is that satisfactory?

13 MS. STEINGARD: Yes, Your Honor, but we still have
14 -- you know, from our point of view the deposition of the
15 Committee's advisors still needs to go forward.

16 UNIDENTIFIED SPEAKER: I don't see why. It's
17 completely duplicative.

18 THE COURT: But, if they want it, they can have it.

19 UNIDENTIFIED SPEAKER: Well, Judge, respectfully,
20 I mean --

21 THE COURT: How many advisors are there?

22 UNIDENTIFIED SPEAKER: -- the advisor's knowledge
23 is duplicate -- two advisors, by the way, the financial
24 advisor and counsel, and this information is completely
25 duplicative of what we're going to be providing in the

1 affidavit, and I don't know why --

2 THE COURT: That may be, but I'm not going to
3 restrict them that much.

4 THE CLERK: Excuse me, Judge --

5 THE COURT: But -- This shouldn't --

6 THE CLERK: This is Nancy --

7 THE COURT: The substance of the deposition is only
8 toward the time that Mr. Embry was on the Committee and has
9 to do with his attendance on Committee and what he did with
10 the Committee and not anything else.

11 THE CLERK: Judge Peterson --

12 THE COURT: Yes.

13 THE CLERK: This is Nancy in Delaware. The
14 parties, except for Ms. Denniston, are not identifying
15 themselves and it's being really difficult for the ECCRO.

16 THE COURT: Okay.

17 THE CLERK: Thank you.

18 THE COURT: When you speak, tell us who you are,
19 please. All right, can we get this settled then. The
20 affidavits by the Committee members will be supplied within
21 five days. The deposition of the advisors will go forward
22 only on the issues of what the advisors had contact with Mr.
23 Embry. In other words, the time frame would be from November
24 the 26th to May the 6th.

25 MR. ALCOTT: Your Honor, even with respect to that

1 as so narrowed, could we in the first instance --

2 THE CLERK: Sir, can you give your name, please.

3 MR. ALCOTT: It's Mark Alcott of Paul Weiss
4 representing the Committee. With respect to the advisors,
5 Your Honor, as you've now defined the scope of the disclosure
6 to be made by the advisors and we have the advisors do that
7 in the first instance, also by affidavit, then only if there
8 was some need for follow-up to have their depositions taken.

9 THE COURT: When can you have the affidavits by the
10 advisors?

11 MR. ALCOTT: Within the --

12 MS. STEINGARD: Your Honor, this is Ms. Steingard.
13 If I could just briefly be heard on that.

14 THE COURT: Let Mr. Alcott finish.

15 MS. STEINGARD: Okay.

16 MR. ALCOTT: We can certainly provide that within
17 one week from today.

18 THE COURT: All right, by the 14th.

19 MR. ALCOTT: Yes.

20 THE COURT: All right, and when do you have the
21 depositions noticed up?

22 MS. STEINGARD: Your Honor, the deposition of
23 Houlihan is for the 18th, and the deposition of Paul Weiss --
24 I'm just looking at the schedule here. I'm not seeing where
25 -- I'm sorry, is the 19th. But, you know, part of the issue

1 here, Your Honor, is that the allegation is that Northwestern
2 provided substantial information both to Paul Weiss and to
3 Houlihan and that Paul Weiss and Houlihan distributed that
4 information to the Committee at Committee meetings and
5 otherwise. So it has to be more than just contacts that Mr.
6 Kornberg or someone else from Paul Weiss or those at Houlihan
7 say they had with Mr. Embry. We have to be permitted to get
8 information about what confidential information concerning
9 Northwest, if any, Houlihan or Paul Weiss provided to the
10 Committee at Committee meetings or to Embry directly on other
11 occasions.

12 THE COURT: It seems to me that what -- Was Embry
13 at every Committee meeting?

14 MS. STEINGARD: No.

15 THE COURT: Then why would they want to submit an
16 affidavit that they supplied certain information to Committee
17 members Embry was not present at.

18 MR. AUSTIN: Your Honor, this is Jess Austin. It
19 is our understanding that -- speaking on behalf of
20 Northwestern, that to the extent Mr. Embry was not at a
21 Committee meeting a representative of Mr. Embry was at that
22 Committee meeting either from his company or as an attorney
23 from Fried, Frank representing Mr. Embry.

24 MR. ALCOTT: And, Your Honor, Mark Alcott, again,
25 for the Committee. Therefore, Mr. Embry, either firstly or

1 through his representative has all the information that's
2 just been requested.

3 THE COURT: I don't know that, and they have the
4 opportunity and the right to take the deposition of any
5 proposed or potential witness, and I'm not going to get in a
6 situation here where we come up to the trial and they say,
7 We've got a surprise. So they're going to be allowed -- So,
8 get those affidavits by the 14th, and then counsel, you can
9 take their deposition, and if you need some more time through
10 the week of the 28th, I'll allow that.

11 MS. STEINGARD: Okay, thank you, Your Honor.

12 THE COURT: For the advisors.

13 MS. STEINGARD: Thank you, Your Honor.

14 THE COURT: Does that take care of all this
15 discovery matter?

16 MS. STEINGARD: Yes, Your Honor, from our point of
17 view. This is Ms. Steingard from Fried, Frank. From our
18 point of view you have dealt with all the issues that were
19 presented.

20 THE COURT: I need a couple of questions here by
21 counsel. What is the status of the withdraw of reference
22 motion?

23 MS. STEINGARD: As far as we understand -- This is
24 Ms. Steingard.

25 THE COURT: On this case.

1 MS. STEINGARD: Right. This is Ms. Steingard
2 again. As far as we understand, nothing has occurred. We
3 have heard nothing about that.

4 THE COURT: Okay. And what do you anticipate on
5 the length of trial?

6 MS. STEINGARD: Because we don't know what --

7 THE COURT: Give me plaintiff first, let me --

8 MR. AUSTIN: Your Honor, this is Jess Austin on
9 behalf of Northwestern. We think this entire trial can be
10 done within two days.

11 THE COURT: All right.

12 MR. AUSTIN: The issue is, we will be able to frame
13 the issues fairly narrowly, we believe.

14 THE COURT: All right. Counsel for the defendant?

15 MS. STEINGARD: You know, I think --

16 THE COURT: I'm trying to get an estimate here so I
17 can -- I've got some other matters that week, and I'd like to
18 know how I can schedule them.

19 MS. STEINGARD: Right. I think that a third day
20 may be necessary, Your Honor, I'm not sure.

21 THE COURT: All right. Now, here's the trial
22 schedule so you can just -- By the way, I'm going to do two
23 things. I'm going to update the -- advance the pretrial
24 order. I had it set for February the 2nd. I'd like that
25 filed by February the 1st, and the reason is that I'm going

1 to have a telephone conference on that pretrial order on
2 February the 4th. Okay?

3 MS. STEINGARD: Yes, Your Honor.

4 THE COURT: If there's anything that we have to
5 straighten out, I hope that's in my hand up here by the 2nd
6 or that you have it on the docket by the 1st, and then we'll
7 have the pretrial conference on the 4th. Give your names to
8 Nancy who's going to appear, and on the 7th we'll start the
9 trial at 9 a.m.

10 MS. STEINGARD: Thank you, Your Honor.

11 THE COURT: Now --

12 MS. STEINGARD: Also we have a date, Your Honor,
13 for pretrial motions.

14 THE COURT: That date is firm. I want those by the
15 27th.

16 MS. STEINGARD: Yes, Your Honor.

17 THE COURT: And as far as the trial is concerned,
18 we're going to take about a fifteen minute break in the
19 morning. We'll take an hour break for the lunch, and a
20 fifteen minute break in the afternoon, and we'll go from 9 to
21 5 or 5:30. So, have the witnesses there ready to go. All
22 right? Any objection to that?

23 UNIDENTIFIED SPEAKER: Not at all, Your Honor.

24 MS. STEINGARD: None, Your Honor.

25 THE COURT: And then you'll all have an opportunity

1 after the evidence is in to submit your proposed findings of
2 fact and any memorandums. All right?

3 MS. STEINGARD: Okay.

4 THE COURT: Well, thank you all for appearing. I
5 hope we get it straightened out and use your professionalism
6 in doing so.

7 THE CLERK: Judge, this is Nancy again. Did you
8 want to set a time on February 4th for that pretrial
9 conference?

10 THE COURT: Let's do it -- What's convenient for
11 you parties back there?

12 UNIDENTIFIED SPEAKER: We're on the East coast,
13 Your Honor, so whatever is convenient for you.

14 THE COURT: How about 9:30. Is this all right for
15 11:30 for you people back there?

16 UNIDENTIFIED SPEAKER: Eleven-thirty Eastern time
17 is fine.

18 THE COURT: All right. Nine-thirty your time,
19 11:30 Eastern time.

20 MS. STEINGARD: It's 11:30 Eastern.

21 THE COURT: Yeah.

22 MS. STEINGARD: Okay.

23 THE COURT: Thank you very much, counsel. I
24 appreciate your efforts.

25 UNIDENTIFIED SPEAKER: Thank you.

1 MS. STEINGARD: Thank you, Your Honor.

2 UNIDENTIFIED SPEAKER: Thank you.

3 (Whereupon at 12:04 p.m. the hearing in this matter
4 was concluded for this date.)

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11 I, Elaine M. Ryan, approved transcriber for the
12 United States Courts, certify that the foregoing is a correct
13 transcript from the electronic sound recording of the
14 proceedings in the above-entitled matter.

15

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